

# WHAT SEATTLE BUSINESS OWNERS SHOULD KNOW about the ENDANGERED SPECIES ACT

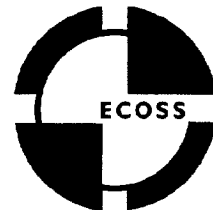
PUGET SOUND CHINOOK SALMON ARE NOW PROTECTED  
UNDER THE FEDERAL ENDANGERED SPECIES ACT.

Construction projects as well as existing business operations will be impacted. In the City of Seattle any business development, expansion or operating activity that takes place on or near a body of water will come under close scrutiny. You may find **increased permit review** and enforcement for any activity that impacts a stream, wetland or other critical area. Existing business operations must now comply with **tighter stormwater control requirements.**

The best way to deal with the impacts of the Endangered Species Act to your business is to **be prepared.**

This brochure will guide you with the following:

1. How do I know if my project or current operations are affected?
2. What kind of delays can be expected and how can I minimize them?
3. What type of permits may be needed for projects?
4. Where can I go for more information?



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## BACKGROUND:

The Endangered Species Act (ESA) was enacted by Congress in 1973 in response to an alarming decline of many animal and plant species. A species is listed as "**endangered**" if it is in danger of extinction, or "**threatened**" if it is likely to become endangered within the foreseeable future. The ultimate goal of the ESA is to return endangered and threatened species to the point where they no longer need the law's protections. The ESA has three basic missions:

- 1. to **identify species** needing protection and the means necessary to protect and recover those species;
- 2. to **prevent harm** to listed species; and
- 3. to **prevent and punish** the so-called "**taking**" of listed species and destruction of their habitats.

The ESA prohibits any person from "taking" any listed species. To "take" is "to harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect, or to attempt to engage in any such conduct." The regulation further explains that "such act may include significant habitat modification where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering."

**In other words, any activity that significantly impacts Chinook salmon or their habitat may be prohibited under the Endangered Species Act.**

Here are examples of activities that may constitute a "take":

- **Constructing or maintaining barriers** that eliminate or impede a listed species' access to habitat essential for its survival or recovery;
- **Discharging pollutants** into a listed species' habitat;
- **Removing or altering rocks, soil, gravel, vegetation, or other physical structures** that are essential to the integrity and function of a listed species' habitat;
- **Removing water or otherwise altering streamflow** when it is likely to impair spawning, migration, or other essential functions;
- **Constructing or using inadequate bridges, roads, or trails** on stream banks or unstable hill slopes adjacent to or above a listed species' habitat;
- **Constructing or using inadequate pipes, tanks, or storage devices** containing toxic substances, where the release of such a substance is likely to significantly modify or degrade listed species' habitat;
- **Disturbing shoreline and riparian zones;** retarding or preventing the development of habitat conditions upon which listed species depend; or
- **Filling or isolating side channels, ponds and intermittent waters** upon which listed species depend for refuge during high flows.

# DETERMINE WHETHER YOUR ACTIVITIES ARE PROHIBITED OR RESTRICTED UNDER THE ESA

Will any of your existing or prospective activities will affect the aquatic systems on which these fish depend.

Do your planned activities include building, clearing or grading on or near water?

Will your planned activities increase the amount (or impact the quality) of stormwater run-off from your property?

Does your plan includes building new roads or impervious surface?

Do any of those activities depend on a federal permit, federal license or federal dollars.

A **consultation** may be required with the National Marine Fisheries Service (NMFS). All projects receiving federal funding or subject to permitting by a federal agency must prepare a **biological assessment** evaluating the likelihood of "take". The funding or permitting agency must have a "Section 7 consultation" with NMFS to report their findings, and NMFS has the authority to prevent the agency from taking the action in question if it is likely to adversely affect the species. (This is the case unless the project is covered under a 4(d) rule exception or incidental "take" permit.) For **more details** on dealing with a federally funded or permitted project please see the **resource list** included in this brochure.

You should still **examine** whether your activities may constitute a "take" (harmful to endangered fish or their habitat), and **plan for increased scrutiny** at the local permitting levels. All local governments are now required to comply with the ESA **when issuing permits**; therefore, they will look closely at any activity that could potentially harm salmon or their habitat.

**If you think that  
Your Activities**

*"... they will look closely  
at any activity that could  
potentially harm salmon  
or their habitat."*

**THEY  
PROBABLY  
WILL**

AM I AFFECTED?

## CONSTRUCTION ACTIVITIES: WHAT TO EXPECT AND HOW TO MINIMIZE DELAYS

Local governments are being directed to increase field inspections and enforcement of regulations. Expect some delays in the processing of permits.

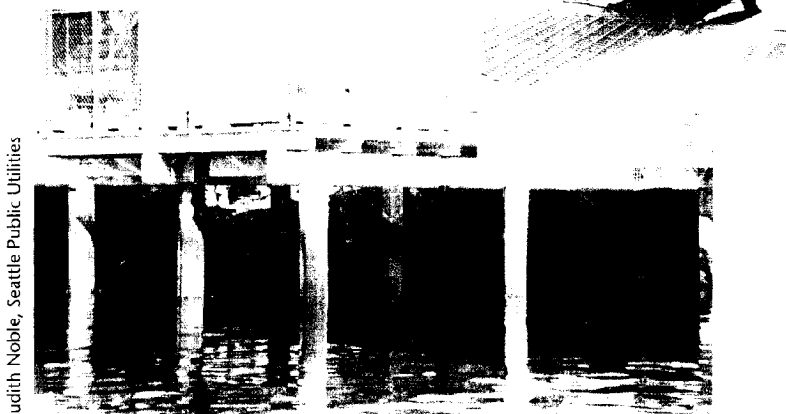
Right now site inspections are required before the permit application is submitted for any construction project in the City of Seattle.

The key to minimizing delays is preparation.

Walk into the permitting agency prepared with the following information:

- 1. Are listed salmon species present in the water body near my project? If not, have they ever been present?
- 2. If your project is on a shoreline, know the exact location of the waters edge; know the location of the Ordinary High Water Mark and be able to describe the substrate and water depth.
- 3. Know the topography of your proposed project site; how does stormwater flow over the property, where do your stormwater pipes drain to?
- 4. Be able to show that you have thought about salmon-friendly alternatives and mitigation.
- 5. You can still develop successfully if you take the time to be prepared.

### Salmon Friendly Dock Construction



Judith Noble, Seattle Public Utilities

The Muckleshoot Tribe fishing dock, located on the Duwamish River, is a good example of "salmon friendly" construction of overwater structures. By using metal grating on the walkway, light can penetrate through to the eelgrass beds beneath the dock. It is also constructed with widely spaced, concrete columns, instead of creosote-coated wood columns.

## EXISTING OPERATIONS:

### THERE ARE NEW STORMWATER REQUIREMENTS. HERE'S WHAT TO EXPECT

Even if you're not planning new construction for your business, existing business operations will be affected by new, more stringent stormwater regulations. The goal of these regulations is to minimize the amount (and toxicity) of pollutants that flow into waterways off of impervious surfaces.

You may be subject to third party lawsuits, if the third party can demonstrate that your existing operations kill salmon or harm their critical habitat. To help minimize your potential liability:

**Prevent stormwater from becoming contaminated by your business operations and entering salmon-bearing waters.**

### HIGH-RISK POLLUTION-GENERATING ACTIVITIES

Seattle businesses involved in activities that pose a higher risk of contaminating stormwater runoff have new requirements to meet. These are known as High-Risk Pollution-Generating Activities and include the following categories:

- Fueling operations
- Vehicle, equipment or building washing or cleaning
- Truck or rail loading or unloading of liquid or solid materials
- Liquid storage in stationary above ground tanks
- Outside portable container storage of liquids, food wastes, or dangerous wastes
- Outside storage of non-containerized materials, by-products, or finished products
- Outside manufacturing activity
- Landscape construction or maintenance

If your business is involved in a High-Risk Pollution-Generating activity it should be:

**enclosed**

**covered**

**contained**

### DID YOU KNOW?

Seattle business and property owners are now expected to comply with the following requirements

*(unless you drain to the public combined sewer):*

- Storm Drain Facility Maintenance
- Eliminate Illicit Storm Drain Connections
- Street, Driveway, Parking Lot, and Sidewalk Maintenance

**Call ECOSS for more information 206-767-0432**

## RESOURCES:

**For more information on:**

	Regulatory Authority	Permit	Phone
Seattle	Seattle DCLU	Shoreline Substantial Development	206-624-8850
		SEPA	206-684-8850
		Designated Environmental Critical Areas	206-233-7232
		Stormwater, Grading, and Drainage Control	206-233-7232
		Building Code or Director's Rule (Building Permit)	206-684-4630
	Seattle Fire Department	Fire Code or Administrative Rule	206-386-1400
State	WA Dept. of Ecology	Coastal Zone Management Consistency Determination	425-649-7000
		Permitting Assistance Center General Information	800-917-0043
		Clean Water Act Section 401 Water Quality Certification	425-649-7000
	WA Dept. of Fish & Wildlife	State Hydraulic Project Approval Permit	425-775-1311
	WA Dept. of Natural Resources	Aquatic Use Authorization (aquatic lease)	360-902-1100
Federal	Corps of Engineers, Seattle District	Section 404 Permit	206-764-3495
		Section 10 Permit	206-764-3495

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